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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/705,893 | 11/13/2003 | Dae-Sung Han | 1594.1295 | 6097 |
| 21171 | 7590 | 01/23/2006 | EXAMINER | |
| STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005 | | | COCKS, JOSIAH C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3749 | |

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,893

Applicant(s)

HAN ET AL.

Examiner

Josiah Cocks

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-17 and 19 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 11/09/2005 is acknowledged.
2. Regarding applicant's comments of the prior 35 USC § 112 rejection of claim 8, applicant traverses this rejection and therefore implicitly asserts that the added limitation that the heat reflecting surface is "cooled by the water" was present in the application as originally filed. However, applicant does not point to any evidence within the disclosure to support the traversal. Applicant's removal of the claim language identified by the examiner as constituting new matter is regarded as an appropriate response to the prior 35 USC § 112 rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-6 and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,508,024 to Perkins (“Perkins”) in view of U.S. Patent No. 6,125,838 to Hedgpeth (“Hedgpeth”).

Perkins discloses in Figures 1-7 a cooking apparatus similar to that described in applicant’s claims 1-6 and 9-17. In particular, Perkins shows at least one heating unit (71), a grill unit (76) and a cover (62) defining a cooking space thereunder and having an air ventilation structure (64) located in a top portion of the cover to ventilate air out of the cooking space, thus serving as the primary conduit for this ventilation (see Fig. 5). Ports (63) located in the base serve as the primary means for supplying air to the cooking space.

In regard to the recitation of the claims that the air outlet holes range from 5% to 25% of an effective area of the grill unit, as shown in Figs. 4 and 5 the air ventilation holes appear to lie within this recited range. However, even if the area of these holes is not considered to be in the recited range, it is noted that Perkins specifically discloses that the amount of ventilation is selectable to control the rate of cooking and amount of smoke exhausted (see col. 6, lines 1-13 and prior discussion of exhaust ports 43, col. 4, lines 49-68). Therefore, to have selected a specific percentage of outlet area would be simply a matter of optimizing the exhaust port size of the prior art outlets of Perkins obtainable through routine experimentation and is not considered to be patentably distinct. See MPEP § 2144.05(II)(A).

Perkins possibly does not disclose an air ventilation structure to provide air into the cooking space that is located on the cover and specifically a side portion of the cover

Hedgpeth teaches a cooking apparatus that is analogous to that of Perkins. In Hedgpeth, a plurality of adjustable intake air ventilation ports (74 with slides 76) (see Fig. 2) are located on the side of a cover (24) of the cooking apparatus to provide the necessary air to the cooking chamber (col. 7, lines 1-5).

In regard to the limitations of the claims that the air ventilation structure allows the temperature of the cooking space to be maintained below 260 degrees C., both Perkins and Hedgpeth teach that their ventilation holes are adjusted to control the temperature of the cooking space (see Perkins, col. 4, lines 51-52 and Hedgpeth, col. 7, lines 3-6). Therefore, to have selected a specific temperature to maintain the cooking space at would be simply a matter of optimizing the temperature adjustment of the prior art obtainable through routine experimentation and is not considered to be patentably distinct. See MPEP § 2144.05(II)(A).

Therefore, in regard to claims 1-6 and 9-17, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cover of Perkins to incorporate the air intake ventilation holes of Hedgpeth allow for regulation of the air intake to desirably control cooking chamber temperature (see Hedgpeth, col. 7, lines 3-11). The placement of air intake holes in the cover being preferable to the air intake holes located in the base, such as shown in Perkins (ports 63), because the base location is understood to potentially cause flame burn out in high wind conditions (see Hedgpeth, col. 1, line 17-24)

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6. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Hedgpeth as applied to claims 1 and 9 above, and further in view of U.S. Patent No. 5,189,945 to Hennick ("Hennick") (cited by applicant).

Perkins in view of Hedgpeth teach all the limitations of claims 7 and 19 except for a pair of water tanks and a plurality of grilling pipes communicating with the water tanks.

Hennick discloses in Figures 1-17 a cooking apparatus that is considered analogous to that of Perkins. In Hennick, the cooking apparatus includes a heating unit (2), and a grill unit having a plurality of grilling pipes (12) communicating with a pair of water (19) tanks to allow flow of water through the pipes (see col. 5, lines 17-42).

Therefore, in regard to claims 7 and 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cooking apparatus of Perkins to incorporate the water tanks and grilling pipes of Hennick as these structures desirably aid in the cleaning grill components and prevent the undesirable occurrences of grease burning on the cooking surface and food sticking to the cooking surface (see Hennick, col. 3, lines 55-66).

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Hedgpeth, as applied to claim 1 above, and further in view of UK Patent No. 2 286 111 ("111 UK Patent") (cited by applicant).

Perkins in view of Hedgpeth teach all the limitations of claim 8 except for a heat reflecting unit containing water therein to prevent materials dropped from the food from being burned.

The '111 UK Patent discloses in Figures 1-7 a cooking apparatus considered to be in the same field of endeavor as Perkins. In the '111 UK Patent, the cooking apparatus comprises at least one heating unit (23), a grill unit (14), and a heat-reflecting unit that includes two reflectors (24) connected to one another by a reservoir (15) containing water that receives materials dropping from the food on the grill unit (see item 15 and page 2, lines 6-9). The examiner considers that the reflectors (24) are part of a reflector unit that includes both reflectors (24) and the water containing reservoir (15) therebetween. Further, the examiner considers that any of the surfaces of reservoir (15) may be considered a reflecting surface as claimed, as these surfaces of the reservoir are identical in both structure and placement in the grilling unit to the reflecting surfaces disclosed by applicant (e.g. applicant's reflecting unit 12).

Therefore, in regard to claim 8, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cooking apparatus of Perkins to incorporate the heat reflecting unit with water reservoir as shown in the '111 UK Patent to desirably make the heating device more efficient (see the '111 UK Patent, page 3, lines 7-11) and to receive and dispose of materials dropping from the food located on the grill (see the '111 UK Patent, page 2, lines 6-9).

Response to Arguments

8. Applicant's arguments filed 11/09/2005 have been fully considered but they are not persuasive.

Perkins in view of Hedgpeth

Applicant argues that the examiner's assertion that the exhaust ports are "capable of providing the necessary air, including primary air, to the cooking space" has no support. Review of the rejection reveals that the examiner is equating the exhaust ports (64) of Perkins to the exhaust ports (32) of applicant's invention. The statement identified by applicant referred to air "to the cooking space" but as reflected in the prior statements in the rejection, the ports (64) function to ventilate air from the cooking space and are considered to serve as the primary means for ventilating this air. While the prior statement of the rejection indicated these ventilation ports are capable of functioning as the primary ventilation conduit, review of the Perkins references reveals that these ports are not only capable of serving as the primary conduit but, in fact, do serve as the primary ventilation conduit. Accordingly, these ports (64) in Perkins are properly considered to correspond to applicant's ports (32) in both structure and function.

Applicant next argues that Hedgpeth does not disclose that the air-ports (74) on the side of the cover function to provide primary air to the cooking space. To this end, applicant states:

"the only disclosed or suggested primary conduit for incoming air in both Perkins and Hedgpeth is in their respective bases." (response, p. 8)

However, the examiner notes that this statement appears to conflict with the disclosure in Hedgpeth that the ports (74) in the hood/cover control overhead air flow when the hood/cover is closed (see Hedgpeth, col. 2, lines 8-10) and in doing so, function to control air both into and out of the cooking space (see Hedgpeth, col. 7, lines 3-5). The desirability of air ventilation holes located in the cover/hood at a point above the burner instead of in the base (such as holes 63 in Perkins) is desirably as the base ports can cause flame burner out in high wind conditions (see

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Hedgpeth, col. 1, lines 17-21) and provide for temperature regulation of the cooking chamber (see Hedgpeth, col. 7, lines 3-11).

The examiner also notes that when Perkins and Hedgpeth are combined the result is a cover having the placement of holes identical to that claimed and disclosed by applicant. Namely, the combined cover would include an arrangement of holes in the top portion of the cover (i.e. 64 of Perkins) with an arrangement of holes in the side portion of the cover (i.e. holes 74 of Hedgpeth) that is structurally identical to the cover having holes claimed by applicant (note cover 30 and holes 31 and 32 shown in applicant's Fig. 2). Even if neither Perkins nor Hedgpeth were considered to disclose that the holes in the cover function for the intended use of providing inlet air, these holes would be capable of such a use as they are openings that allow for the passage of air. It has been held that the recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967). In this case, the cover resulting from the combination of Perkins and Hedgpeth is structurally identical to that of applicant's claimed invention and is therefor not patentably distinguishable therefrom.

Applicant appears to assert that some structural difference must arise between applicant's invention and the combined references (note response, p. 8), however, applicant does not point out any such structural distinction.

The '111 UK Patent (Makris)

Applicant also argues that applicant's heat reflecting unit is somehow distinguished from the heat reflecting unit shown in the '111 UK patent (termed "Makris" by applicant). The examiner does not agree. Makris shows a heat-reflecting unit located beneath a grill in the same manner as disclosed by applicant. The heat-reflecting unit of Makris is made up of a water containing reservoir and additional downwardly directed heat reflectors (24). Even if the reflectors (24) are not considered to the "heat reflecting surface" now claimed in applicant's claim 8, any of the surfaces of reservoir (Makris, 15) may be equated to the surfaces of applicant's water containing reflecting unit (12). The examiner considers that there is no claimed or disclosed structural distinction between the water containing heat reflecting unit (24 and 15) of Makris from that of applicant's unit (12).

Accordingly, applicant's claims are not considered to patentably distinguish over the prior art of record.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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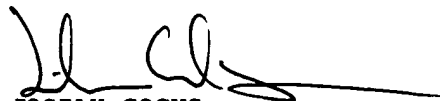
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
January 4, 2006


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749